

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.36.320, 17.36.321, 17.36.322,)	PROPOSED AMENDMENT
17.36.323, 17.36.325, 17.36.912,)	
17.36.918, 17.38.101, and 17.38.106)	(SUBDIVISIONS/ON-SITE
pertaining to sewage systems,)	SUBSURFACE WASTEWATER
definitions, horizontal setbacks,)	TREATMENT)
floodplains, plans for public sewage)	(PUBLIC WATER AND SEWAGE
system, and fees)	SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On May 19, 2014, at 1:30 p.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board and department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., May 5, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.36.320 SEWAGE SYSTEMS: DESIGN AND CONSTRUCTION (1) All components of ~~subsurface~~ sewage treatment systems must be designed and installed in accordance with ~~d~~Department Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular and are subject to the following restrictions:

(a) systems designed in accordance with Department Circular DEQ-2 may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4; and

(b) experimental systems are allowed only pursuant to a waiver granted in accordance with ARM 17.36.601.

~~(2) As indicated on Table 2 of this rule, public systems and multi-~~ Multiple- user systems with design flows greater than or equal to 2500 gallons per day must be designed by a ~~registered~~ professional engineer and are subject to the requirements in [New Rule II, proposed in MAR Notice No. 17-358 published in this register].

~~(2)~~ (3) A For subsurface systems, a minimum separation of at least four feet

of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer, except that at least six feet of natural soil must exist on a steep slope ~~(of greater than 15% percent to 25%)~~.

~~(3)~~ (4) The proposed subsurface sewage treatment area must include an area for 100% percent replacement of the system, except that the replacement area for elevated sand mounds may be allowed as provided in Department Circular DEQ-4. If a size reduction is approved for a system, the replacement area must have area sufficient for the system without the size reduction. Unless a waiver is approved by the department pursuant to ARM 17.36.601, the replacement area must meet the same requirements as the primary area. If the replacement area is not immediately adjacent to the primary area, or if ~~the department indicates to the applicant that it has reason to believe~~ there is evidence that site conditions for the replacement area may vary from those for the primary area, the applicant shall submit adequate evidence of the suitability of the replacement area.

TABLE 2
ALLOWABLE SYSTEMS, REQUIREMENTS

	YES - Systems that are allowed NO - Systems that are not allowed			
DEQ-4 System	Public: ≥ 5000 gpd (1) (7)	Public or Multiple- user: ≥ 2500 gpd and ≤ 5000 gpd (2) (7)	Public or Multiple- user: < 2500 gpd (3)	Individual/ Shared: (6)
Standard Absorption Trench	NO	NO	YES	YES
At-Grade Systems	NO	NO	YES	YES
Gravelless	YES	YES	YES	YES
Deep Trench	NO	NO	NO	YES
Elevated Sand Mound	YES	YES	YES	YES
Evapotranspiration (ET) Systems	NO	NO	NO	NO (5)
ET-Absorption	NO	YES	YES	YES

Intermittent Sand Filters	YES	YES	YES	YES
Recirculating Sand Filters	YES	YES	YES	YES
Recirculating Trickling Filters	YES	YES	YES	YES

	YES – Systems that are allowed NO - Systems that are not allowed			
DEQ-4 System	Public: > 5000 gpd (1)	Public or Multiple- user: ≥ 2500 gpd and ≤ 5000 gpd (2)	Public or Multiple- user: < 2500 gpd (3)	Individual/ Shared: (6)
Chemical Nutrient Reduction; Aerobic Sewage Treatment Systems	NO (5)	NO (5)	NO (5)	NO (4)(5)
Pressure Distribution	YES	YES	YES	YES
Sand-lined Absorption Trenches	NO	YES	YES	YES
Experimental Systems	NO (5)	NO (5)	NO (5)	NO (5)

- (1) Public systems with design flow greater than 5000 gallons per day (gpd).
- (2) Public or multiple-user systems with design flow greater than or equal to 2500 gpd and less than or equal to 5000 gpd.
- (3) Public or multiple-user systems with design flow less than 2500 gpd.
- (4) Means of securing continuous operation and maintenance of these systems must be approved by the reviewing authority prior to DEQ approval.
- (5) May be allowed by waiver, pursuant to ARM 17.36.601.
- (6) Individual or shared commercial sewage systems that have a design flow greater than 700 gpd shall be considered multi-user.
- (7) Must be designed by a professional engineer.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The department is proposing to eliminate Table 2 and replace it with a narrative format. Table 2 shows sewage systems that are allowed by DEQ-4, but the systems currently listed in Table 2 do not include all of the systems addressed in the most recent edition (2013) of the Circular. Table 2 also adds some restrictions and requirements for Department Circular DEQ-4 (DEQ-4) systems. The department is proposing to eliminate some of these additional restrictions. With the proposed elimination of some of the restrictions in Table 2, and because Table 2 otherwise simply lists systems allowed by DEQ-4, it has limited use. The restrictions and requirements that are retained are proposed to be set out in a narrative format that is easier to understand.

The department is proposing to eliminate the restrictions imposed by Table 2 on standard absorption trenches, at-grade systems, deep trenches, evapotranspiration (ET) systems, ET-absorption systems, and chemical nutrient reduction and aerobic sewage treatment systems. The restrictions are not necessary because, if the systems are designed in accordance with DEQ-4, they will provide adequate treatment of wastewater. The proposed amendments would retain the restriction in Table 2 that experimental systems may be allowed only through a waiver. The amendments also would retain the requirement that multiple-user systems with a design flow greater than or equal to 2500 gallons per day be designed by a professional engineer. The amendments require that multiple-user systems designed by a professional engineer comply with the requirements of New Rule II, proposed in MAR Notice No. 17-358 and published in this register.

ARM 17.36.320(1) requires that components of sewage systems be designed in accordance with DEQ-4. The proposed amendments would delete the term "subsurface." This is necessary because DEQ-4 is not limited to subsurface systems. DEQ-4 also addresses systems such as waste segregation and incinerator toilets. The proposed amendments also add a reference to Department Circular DEQ-2 (DEQ-2). This is necessary because DEQ-2 requirements may be applicable to some public sewage systems.

Proposed ARM 17.36.320(1)(a) prohibits use of DEQ-2 for individual, shared, and multiple-user systems, except as provided in DEQ-4. A similar restriction currently exists in ARM 17.36.321(2), and it is proposed to be restated here for clarity. Because DEQ-4 requires some components to be designed in accordance with DEQ-2, the amendments will allow use of DEQ-2 when required by DEQ-4.

Proposed ARM 17.36.320(1)(b) sets out the requirement, currently in Table 2, that experimental systems are allowed only pursuant to a waiver.

The proposed amendments create a new ARM 17.36.320(2) to state the existing requirement that a professional engineer design multiple-user systems with a design capacity equal to or greater than 2500 gallons per day. The amendments delete the reference in this sentence to public systems. The provisions requiring design by professional engineers of public sewage systems will now be consolidated in the rules for public water and sewer systems. See proposed amendments to ARM 17.38.101. The amendments delete the reference to a "registered" professional engineer. The term "registered" is not necessary because "professional engineer" is proposed to be defined, in proposed amendments to the department's Sanitation in Subdivisions Act rules, as a person licensed pursuant to Title 37, chapter 67, MCA. This definition already appears in the public water supply rules.

See ARM 17.38.101(3)(m). The proposed amendments provide a cross-reference to the requirements in New Rule II, proposed in MAR Notice No. 17-358 and published in this register, for engineer-designed multiple-user systems. New Rule II, proposed in MAR Notice No. 17-358 and published in this register, requires the applicant to commit to retaining a professional engineer to certify that construction was completed in accordance with the approved design and requires that an engineer certify, before the system is operated, that it was completed in accordance with approved plans. It also requires an engineer to submit to the department, within 90 days after completion, certified "as-built" plans, and requires that plans and specifications be re-submitted if construction is not completed within three years after approval.

The proposed amendments to renumbered ARM 17.36.320(3) clarify that this section is applicable only to subsurface systems. It is not necessary to apply the requirements of this section to systems not addressed in DEQ-4. The proposed amendment eliminates the 25 percent maximum. Under proposed ARM 17.36.322(2), slopes of up to 35 percent are allowed with a variance and there is no need to state a maximum in this rule. This amendment follows proposed amendments to ARM 17.36.322 that would allow pressure-dosed systems on slopes up to 35 percent through a waiver process. This amendment is necessary to clarify that, if a waiver is granted under ARM 17.36.322 to allow a pressure-dosed system on a slope greater than 25 percent, the six-foot soil requirement applies.

The proposed amendments to renumbered ARM 17.36.320(4) clarify that the reviewing authority has discretion whether to require replacement areas for elevated sand mounds, pursuant to DEQ-4. See DEQ-4 Section 6.7.2.5. The amendments also provide that a replacement area must provide space for a full-size system, even when the original approved system qualified for a size reduction. This is necessary to ensure adequate space in the event that the replacement system does not qualify for a size reduction. The amendments also make minor changes for clarification.

17.36.321 SEWAGE SYSTEMS: ALLOWABLE NEW AND REPLACEMENT SYSTEMS (1) ~~The allowable new sewage treatment systems, together with certain other requirements for such systems, are indicated in Table 2 of ARM 17.36.320. All systems must be designed and installed in accordance with dDepartment Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular. The use of sewage systems for replacement systems shall be in accordance with department Circular DEQ-4. Requirements applicable to review of existing sewage treatment systems are set out in ARM 17.36.327.~~

(2) Systems designed in accordance with dDepartment Circular DEQ-2, may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4.

(3) The following sewage systems may not be used for new systems:

(a) through (f) remain the same.

(g) holding tanks, except that-:

(i) ~~¶~~the department may grant a waiver, pursuant to ARM 17.36.601, to allow holding tanks for recreational vehicle dump stations in facilities owned and operated by a local, state, or federal unit of government, or in facilities licensed by the Department of Public Health and Human Services and inspected by the local health

department. Holding tanks must be designed and maintained in accordance with the requirements in ~~e~~Department Circular DEQ-4 and all other requirements imposed by the department and local health department; and

(ii) the department may grant a waiver, pursuant to ARM 17.36.601 and with concurrence by the local health department, to allow holding tanks to replace a failed system when no other alternative that meets these rules is reasonably available.

(4) through (5) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.321(1) delete the reference to Table 2 in ARM 17.36.320. This is necessary because the proposed amendments to ARM 17.36.320 would delete Table 2. The proposed amendments would also add a reference to DEQ-2. This is necessary because DEQ-2 requirements may be applicable to some sewage systems. The amendments would delete the sentence identifying requirements for replacement systems. The sentence is unnecessary because the preceding sentence identifies requirements for "all systems," which include replacement systems.

ARM 17.36.321(2) prohibits use of DEQ-2 for individual, shared, and multiple-user systems. The proposed amendment clarifies that DEQ-2 requirements may apply in some cases, as specified in DEQ-4.

ARM 17.36.321(3)(g)(i) allows the department to allow, through waiver, holding tanks for recreational vehicle dump stations in facilities owned and operated by a local, state, or federal unit of government, or in facilities licensed by the Department of Public Health and Human Services (DPHHS). The proposed amendment would also allow waivers for holding tanks in other types of government-owned or licensed facilities. It is not necessary to limit waivers under this section to recreational vehicle dump stations.

The proposed amendments add a new ARM 17.36.321(3)(g)(ii), which allows the department to allow, through waiver, holding tanks in any situation where a system has failed and no other alternative that meets the rules is reasonably available. The new provision is necessary to allow for continued use of a parcel when the existing sewage system has failed and cannot be replaced with any system other than a holding tank.

17.36.322 SEWAGE SYSTEMS: SITING (1) Subsurface Gravity-fed subsurface sewage treatment systems may not be used if natural slopes are greater than 15% percent; ~~however, the department may, by waiver granted pursuant to ARM 17.36.601, allow a~~ A pressure-dosed sewage treatment system with a design flow of 5000 gallons per day or less may be used on slopes ~~between~~ greater than 15% percent and up to 25% percent, if a registered professional engineer or a person qualified to evaluate and identify soil in accordance with ~~ASTM standard D5921-96e1 (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems)~~ Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

(2) The department may grant a waiver, pursuant to ARM 17.36.601 and after consultation with the local health department, to allow pressure-dosed subsurface sewage treatment systems on slopes greater than 25 percent and up to 35 percent if a professional engineer or a person qualified to evaluate and identify soil in accordance with Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

~~(2)~~ (3) Subsurface sewage treatment systems may not be installed on unstable landforms, as defined in ARM ~~17.36.320~~ 17.36.101.

(3) and (4) remain the same, but are renumbered (4) and (5).

~~(5)~~ (6) For lots ~~one~~ two acres in size or less, the applicant shall physically identify the drainfield location by staking or other acceptable means of identification. For lots greater than ~~one~~ two acres in size, the department may require the applicant to physically identify the drainfield location.

(6) remains the same, but is renumbered (7).

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments delete the reference to a "registered" professional engineer. See Reason for ARM 17.36.320. The proposed amendments to ARM 17.36.322(1) retain the 15 percent slope limitation for gravity-fed subsurface systems, and allow, without a waiver, pressure-dosed systems on slopes greater than 15 percent and up to 25 percent if a qualified person performs a soil evaluation. Gravity-fed systems are not suitable on slopes greater than 15 percent due to the tendency of these systems to load effluent over small areas, which creates the potential for soil sloughing or effluent outfall. However, pressure-dosed systems can be used on those slopes, and the waiver process is not needed to ensure that the pressure-dosed systems are properly designed. For slopes greater than 15 percent and up to 25 percent, the amendments require that soil evaluations be conducted in accordance with DEQ-4 instead of ASTM standard D5921-96el. The reference to the ASTM standard is not necessary because the procedures in the standard are substantially addressed in DEQ-4.

The proposed new ARM 17.36.322(2) allows, through a department waiver, use of pressure-dosed systems on slopes greater than 25 percent and up to 35 percent, if a qualified person performs a soil evaluation. The department has found that in some situations pressure-dosed systems can be installed on these slopes without adverse consequences. The use of the waiver process will allow for consideration of the special circumstances in each case.

The proposed amendment to renumbered ARM 17.36.322(3) is necessary to correct an erroneous cross reference.

The proposed amendment to renumbered ARM 17.36.322(6) expands, from one to two acres, the size of lots in which approved drainfield locations must be staked or otherwise identified. This amendment is necessary to conform to revisions to DEQ-4, 2013 edition (Section 2.1.4.). Physical identification of approved drainfield sites is necessary to prevent other construction improvements from interfering with the drainfield site. Identification may be by physical staking, or by a

method such as electronic identification using GPS coordinates. The increase in lot size from one to two acres is necessary because the potential for interference is not limited to one-acre lots. The amendments also give the department discretion to require drainfield site identification on lots larger than two acres. This is necessary to allow the reviewing authority to prevent interference with an approved drainfield site where a significant amount of ground disturbance is proposed.

17.36.323 SEWAGE SYSTEMS: HORIZONTAL SETBACKS; WAIVERS

(1) ~~Minimum horizontal setback distances, (in feet), shown in Table 3 2 of this rule must be maintained, except as provided in the table footnotes or as allowed through a deviation granted under ARM Title 17, chapter 38, subchapter 1. The setbacks in this rule are not applicable to gray water irrigation systems that meet the setbacks and other requirements of ARM 17.36.319.~~

~~(2) A waiver of the setback distance for a cistern may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the elevation of the cistern is higher than the elevation of the septic tank, other components, or drainfield/sand mound.~~

~~(3) A waiver of the setback distance between drainfields/sand mounds and surface waters, springs, and floodplains may be granted by the department, pursuant to ARM 17.36.601, only if:~~

~~(a) the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or spring; or~~

~~(b) the surface water or spring seasonally high water level is a minimum of 100 feet horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above floodplain elevation.~~

~~(4) The department may require more than 100 feet of separation from the floodplain or from surface water or springs if it determines that site conditions or water quality nondegradation requirements indicate a need for the greater distance.~~

TABLE 3 2
SETBACK DISTANCES
(in feet)

<u>From</u>	<u>To</u> <u>Drinking Water</u> <u>Supply Wells</u>	<u>To</u> <u>Sealed Components</u> <u>(1) and Other</u> <u>Components (2)</u>	<u>To</u> <u>Drainfields/Sand</u> <u>Mounds Soil</u> <u>Absorption</u> <u>Systems</u>
Public or multiple-user drinking water wells/springs	-	100 (3)	100
Individual and shared drinking water wells	=	50 (3)	100
Other wells (4)	-	50 (3)	100 (3)

Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, escarpment	-	10 (3) (5)	25
Slopes > 25% <u>35 percent</u> (4) (6)	-	10 (3) (5)	25
Property boundaries	10 (7)	10 (7)	10 (7)
Subsurface drains	-	10	10
Water Lines mains	-	10 (8)	10
Drainfields/Sand Mounds Soil absorption systems	100	10	-
Foundation walls	-	10	10
Surface water (9), springs	100 (5) (3) (10) (11)	50 (3) (10)	100 (3) (10) (12)
Floodplains	10 (10)	- <u>Sealed components - no setbacks (1)</u> <u>Other components - 100 (2) (3) (10)</u>	100 (10) (13)
Mixing zones	100 (3)	-	-
Storm water ponds and ditches	25 (14)	10	25

(1) Sealed components include ~~sewer lines, sewer mains, septic tanks, grease traps, dosing tanks, and pumping chambers~~ holding tanks, sealed pit privies, and the components addressed in Department Circular DEQ-4, Chapters 4 and 5. Sealed components must meet the requirements of ARM 17.36.322(4).

(2) Other components include ~~intermittent and recirculating sand filters, package plants, and evapotranspiration systems~~ the components addressed in Department Circular DEQ-4, chapter 7.

(3) A waiver of this requirement may be granted by the department pursuant to ARM 17.36.601.

(4) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.

(3) remains the same, but is renumbered (5).

(4) (6) Down-gradient of the sealed component, other component, or drainfield/sand mound soil absorption system.

(5) A waiver of this requirement may be granted by the department pursuant to ARM 17.36.601.

(7) Easements may be used to satisfy the setback to property boundaries.

(8) Unless a waiver is granted by the department pursuant to ARM 17.36.601, sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(9) For purposes of this rule, "surface water" does not include intermittent storm water.

(10) The department may require more separation from the floodplain or from surface water or springs if it determines that site conditions or water quality requirements indicate a need for the greater distance.

(11) Pursuant to ARM 17.36.331, the reviewing authority may require greater than a 100-foot horizontal separation between a well and surface water if there is a potential that the well may be influenced by contaminants in the surface water.

(12) A waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or spring. The setback between drainfields or soil absorption systems to irrigation ditches does not apply if the ditch is lined with a full culvert.

(13) A waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the surface water or spring seasonally high water level is at least a 100-foot horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above the maximum 100-year flood elevation.

(14) The setback is 100 feet for public wells, unless a deviation is granted under ARM Title 17, chapter 38, subchapter 1.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to the title of the rule deletes "Sewage Systems." This is necessary because the setbacks in Table 2 apply to other features besides sewage systems. The proposed amendment to the title also deletes the term "horizontal." This is necessary because proposed new footnote (8) to Table 2 establishes vertical setbacks between water and sewer mains.

The proposed amendments move ARM 17.36.323(2) through (4) into the Table 2 footnotes. The current format is confusing in that some allowable waivers are shown on Table 2 and others are not. These amendments will ensure that all allowable waivers are indicated on the table and described in the table footnotes. The proposed amendment to ARM 17.36.323(1) indicates that all waivers to the setbacks in Table 2 are shown in the footnotes. The proposed amendments to ARM 17.36.323(1) also allow a waiver to a setback in the table if the department has allowed a lesser distance through the deviation process under the public water and sewer (PWS) rules in ARM Title 17, chapter 38, subchapter 1 and related department circulars. This "reciprocal" waiver process is necessary to prevent a conflict between these rules and a deviation for a proposed subdivision facility that is granted under the PWS rules.

At the top of Table 2, column 4, the proposed amendments replace the term "sand mounds" with "soil absorption systems." This is necessary to clarify that the setback table applies to other systems besides sand mounds. The proposed amendments also replace "water supply wells" with "drinking water wells." This is necessary to clarify that the referenced setbacks apply only to water wells proposed to be used for human drinking water supply.

Existing footnotes (1) and (2) of Table 2 identify sealed and "other" components that are subject to the table. The proposed amendments to footnotes (1) and (2) delete the lists of components in the footnotes and replace them with a reference to DEQ-4, Chapters 4, 5, and 7. The components currently listed in the footnotes are addressed in DEQ-4, but DEQ-4 includes other components as well. It is not practical to list all of the components in the footnote. To provide a more complete identification of components that are subject to Table 2, it is necessary to identify them by reference.

In the first row of Table 2, the proposed amendments allow a waiver of the setback between public or multiple-user wells or springs and sealed or other components of sewage systems. A 100-foot setback is not always necessary when the sewage system component is designed to prevent contamination of the water supply. The current table allows waivers under footnote (5). The proposed amendments renumber the waiver footnote as footnote (3) throughout Table 2.

The proposed amendments insert a new second row in Table 2 for individual and shared water supply wells. The current table addresses these wells under "other wells." The new category is proposed in order to distinguish between drinking water wells and non-drinking water wells. Under the proposed amendment, setbacks to non-drinking water wells will be addressed under "other wells." The setbacks are the same for drinking water wells and other wells, except that a waiver is allowed for the setback between other wells and drainfields/soil absorption systems. Because other wells no longer include wells for drinking water, it is appropriate to adjust this setback in some cases through waiver. The proposed amendments would also allow a waiver of the setback between individual, shared, and other wells and sealed and "other" components of sewage systems. A 100-foot setback is not always necessary when the sewage system component is designed to prevent contamination of the water supply or other well. Proposed footnote (4) provides that the setbacks for other wells do not apply to monitoring wells. This is necessary to allow the use of monitoring wells in subdivisions. Compared with wells for irrigation or stockwater, monitoring wells do not present a significant risk of surfacing sewage, and in some cases monitoring wells must be installed close to a sewage source to determine potential impacts to water quality.

The proposed amendments to the setbacks for roadcuts, escarpments, and slopes greater than 25 percent renumber the existing footnote from (3) to (5). The amendments increase, from 25 percent to 35 percent, the slope to which the slope setback applies. This is necessary to be consistent with the proposed amendments to ARM 17.36.322, which allow, through waiver, pressure-dosed sewage treatment systems on slopes between 25 percent and 35 percent. The amendment also renumbers, from (4) to (6), the footnote that clarifies that the slope setback applies down-gradient of the sealed component, other component, or drainfield/soil absorption system.

The proposed amendments add a new footnote (7) to the 10-foot setback for property boundaries to provide that easements may be obtained to satisfy the setback. The purpose of the setback is to allow owners adequate access to their facilities for purposes of repairs and maintenance. In some cases, usually involving a change to a previously approved facility, the 10-foot buffer from the property boundary may be unavailable. In those cases, an easement from the adjoining

landowner will provide adequate assurance that access is available.

The proposed amendments modify the current 10-foot setback for "water lines" so that it would apply only to "water mains." Ten feet of horizontal separation is not needed between sewage system components and water service lines. This amendment will also provide consistency with a comparable setback in the Uniform Plumbing Code. The proposed amendments add a new footnote (8) to the setback that requires an 18-inch vertical separation between water and sewer mains, unless the department grants a waiver. The 18-inch vertical separation requirement is currently found in Department Circulars DEQ-1 (DEQ-1) and DEQ-2 (DEQ-2), and is included in footnote (8) to ensure that subdivision applicants are aware of it. The waiver process will provide a method for considering special circumstances that may affect the need for the 18-inch vertical setback.

The proposed amendments add several new footnotes to the setbacks for surface water and springs. Footnote (9) provides that this setback is not applicable to intermittent storm water. Footnote (9) is added because the amendments add, in the last row of Table 2, a new setback for storm water ponds and ditches. The proposed amendments add footnote (3), which will allow waivers from the setbacks from surface water and springs. Special circumstances can affect whether these setbacks are necessary. The waiver process will provide a method for considering these circumstances on a case-by-case basis. Footnote (10) allows the department to require more separation from surface water or springs, based on site conditions or water quality needs. This footnote incorporates the provisions that are currently in (4) of the rule. Footnote (11) provides a cross-reference to ARM 17.36.331, which allows the reviewing authority to require a greater than 100-foot separation between a well and surface water if there is a potential that the well may be influenced by contaminants. Footnote (11) is necessary to indicate that the setback shown in Table 2 can be modified in those circumstances. Footnote (12) provides that the department may waive the drainfield setback if the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or springs. This footnote incorporates the provisions that are currently in (3)(b). Footnote (12) also states that the setback between drainfields or soil absorption systems and irrigation ditches does not apply if the ditch is lined with a full culvert. This provision reflects an existing department interpretation of former (3)(a). Including it in footnote (12) will provide guidance to applicants about this setback requirement.

The proposed amendments add several footnotes to the floodplain setbacks. The proposed amendments add footnote (3), which allows waivers, to the setback between the floodplain and wells. This is necessary to allow, through the waiver process, consideration of special construction or siting circumstances that minimize the potential for commingling between flood waters and a water supply. Footnote (10) provides that the reviewing authority may require more separation from the floodplain, based on site conditions or water quality needs. This footnote incorporates the provisions that are currently in (4) of the rule. Proposed footnote (13) provides that the department may waive the setback between floodplains and drainfields/soil absorption systems if the applicant demonstrates that the surface water or spring seasonally high water level is at least 100 feet horizontal distance from the drainfield and that the bottom of the drainfield will be at least two feet above the maximum flood elevation. This footnote incorporates the provisions that are

currently in (3)(b) of the rule. The proposed amendments also add footnote (3), which allows waivers, to the setback between the flood plain and "other" sewage components. Under the proposed amendments to footnote (2), "other" sewage components are the advanced treatment systems addressed in chapter 7 of DEQ-4. Some of these systems are sealed units that would not create a contamination risk during a flood event. The waiver process will provide a method for considering these circumstances on a case-by-case basis.

The proposed amendments insert a new row in Table 2 establishing a 100-foot setback between mixing zones and water supply wells. This is necessary to ensure that drinking water wells are isolated from potential sources of contamination. A waiver provision is provided to allow for department consideration of unique circumstances.

The proposed amendments insert a new row in Table 2 establishing setbacks from storm water ponds and ditches. The proposed setbacks are less than those for non-storm surface water and springs. Because storm water facilities have intermittent flows, they are less likely to impact wells or be impacted by sewage disposal facilities. Consequently, it is not necessary to apply the larger setbacks that apply to more permanent surface water sources. Proposed footnote (14) clarifies that the setback remains 100 feet between storm water facilities and public wells. This is necessary to be consistent with the requirements for public wells set out in DEQ-1 and Department Circular DEQ-3 (DEQ-3). Section 3.2.3.1 of DEQ-1 and DEQ-3 requires that public wells be located at least 100 feet from sewer lines, septic tanks, holding tanks, and any structure used to convey or retain industrial, storm, or sanitary waste.

17.36.325 SEWAGE SYSTEMS: SITE EVALUATION (1) remains the same.

(2) If the applicant or the department has reason to believe that ground water will be within seven feet of the surface at any time of the year within the boundaries of the treatment system, ~~the applicant shall install ground water level observation pipes to a depth of at least eight feet to determine the seasonally high ground water level. The applicant shall monitor the observation pipes through the seasonally high ground water period~~ ground water monitoring must be conducted in accordance with Department Circular DEQ-4.

(3) The applicant shall provide descriptions of the soils within 25 feet of the boundaries of each proposed drainfield. ~~Soil descriptions must address the characteristics used in the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993). These characteristics include, but are not limited to, soil texture, soil structure, soil consistence, and indicators of redoximorphic features. Soil descriptions for the proposed subdivision must meet the following requirements:~~

(a) Soil descriptions must be done in accordance with Department Circular DEQ-4. The characteristics that must be addressed include, but are not limited to, soil texture, soil structure, soil consistence, and indicators of redoximorphic features.

(b) Soil descriptions for the proposed subdivision must be based on data obtained from test holes. Test holes must be at least eight feet in depth dug in accordance with Department Circular DEQ-4;. The number of test holes must be as provided in (c), unless a waiver is granted by the department pursuant to ARM

17.36.601. Before a waiver is granted, the applicant shall complete test holes for 25 percent of the proposed drainfield locations in the proposed subdivision, shall demonstrate that the soils are consistent throughout the area requested for a waiver, and shall obtain the approval of the local reviewing authority. The department may require additional test holes than are required in (c) if the department determines that there is significant variability of the soils in the proposed drainfield areas. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the application.

~~(b) (c) At least one test hole must be dug for each individual drainfield and for each shared (two-user) drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. Before a waiver is requested and granted, the applicant must complete test holes for 25% of the proposed drainfield locations in the subdivision, demonstrate that the soils are consistent throughout the area requested for a waiver, and must obtain the approval of the local reviewing authority for reduction in number of test holes. At least three test holes must be dug for each multiple-user and public drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. At least one test hole must be dug in for each zone of a pressure-dosed drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. The department shall require additional test holes if it determines that there is significant variability of the soils in the proposed drainfield area;~~

~~(c) Test holes must be located within 25 feet of the boundaries of the proposed drainfield. The locations must be established by a person qualified to evaluate and identify soil in accordance with ASTM standard D5921-96e1 (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems);~~

~~(d) If the applicant or the department has reason to believe that a limiting layer is within seven feet of the ground surface at the site of a proposed subsurface sewage treatment systems, the department may require additional test pits holes and soil descriptions sufficient to describe the suitability of the soil must be provided; and.~~

~~(e) Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report.~~

(4) Sewage systems that are subject to the design requirements of Department Circular DEQ-2 must meet the siting requirements of that circular.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendment to ARM 17.36.325(2) deletes the existing description of required ground water monitoring procedures and replaces it with a reference to DEQ-4. DEQ-4 contains a more complete statement of procedures and the amendment is necessary to inform subdivision applicants of all applicable ground water monitoring procedures.

The proposed amendments to ARM 17.36.325(3) reorganize the section to consolidate the waiver provisions into a single subsection. This is necessary to eliminate repetition and to clearly indicate which requirements are subject to waiver. The proposed amendments add a reference to DEQ-4 to renumbered ARM

17.36.325(3)(b). DEQ-4 contains a more complete statement of test hole requirements, and the amendment is necessary to inform subdivision applicants of all applicable procedures. The amendment in new (c) is necessary to allow test holes to be dug near, but not in, the zone of disruption by the test hole could interfere with the function of the system. The amendment is also necessary to be consistent with procedures in DEQ-4, 2013 edition. The proposed amendments delete existing ARM 17.36.325(3)(c) because it unnecessarily duplicates other provisions in the rule. The amendment to (d) is proposed because additional holes and descriptions may not always be necessary in this situation. Subsection (e) is eliminated because this requirement will now be found in the new language in (b).

The proposed amendments add a reference to the siting requirements of DEQ-2. This is necessary to identify applicable siting requirements for sewage systems that are subject to DEQ-2.

17.36.912 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) through (4) remain the same.

(5) "Commercial unit" means the area under one roof that is occupied by a business or other nonresidential use. A building housing two businesses is considered two commercial units.

(5) and (6) remain the same, but are renumbered (6) and (7).

~~(7) "Dwelling" or "residence" means any structure, building or portion thereof, which is intended or designed for human occupancy and supplied with water by a piped water system.~~

(8) and (9) remain the same.

~~(10) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency except for sheet flood areas that receive less than one foot of water per occurrence and are considered zone b areas by the federal Emergency Management Agency~~ a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year. The floodplain consists of the floodway and the flood fringe, as defined in ARM Title 36, chapter 15.

(11) through (13) remain the same.

(14) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than ~~420~~ 240 minutes per inch.

(15) "Individual wastewater system" means a wastewater system that serves one living unit or commercial structure unit. ~~The total number of people served may not exceed 24~~ term does not include a public sewage system as defined in 75-6-102, MCA.

(16) remains the same.

(17) "Living unit" means the area under one roof ~~occupied by a family that~~ can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. For example, a duplex is considered two living units.

(18) "Multiple-user wastewater system" means a ~~non-public~~ wastewater system that serves or is intended to serve ~~three through 14 living units or three through 14 commercial structures~~ more than two living units or commercial units or a combination, but which is not a public sewage system as defined in 75-6-102, MCA.

~~The total number of people served may not exceed 24. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data by 2.5.~~

(19) remains the same.

~~(20) "Package plants" means wastewater treatment systems that are sealed within a watertight container and contain components for the secondary and tertiary treatment of wastewater.~~

~~(24) (20) "Percolation test" means a standardized test used to assess the infiltration rate of soils, performed in accordance with Appendix A in Department Circular DEQ-4.~~

~~(22) (21) "Piped water system supply" means a plumbing system that conveys water into a structure from any source including, but not limited to, wells, cisterns, springs, or surface water.~~

(23) through (28) remain the same, but are renumbered (22) through (27).

~~(29) (28) "Septic tank" means a storage wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.~~

~~(30) (29) "Shared wastewater system" means a wastewater system that serves or is intended to serve two living units or commercial structures units or a combination of both. The total people served may not exceed 24 term does not include a public sewage system as defined in 75-6-102, MCA. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.~~

(31) and (32) remain the same, but are renumbered (30) and (31).

~~(33) (32) "Soil profile" means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method in Appendix B, Department Circular DEQ-4.~~

(34) and (35) remain the same, but are renumbered (33) and (34).

~~(36) (35) "Wastewater" means water-carried waste that is discharged from a dwelling, building, or other facility, including wastes including, but not limited to:~~

(a) through (d) remain the same.

~~(37) (36) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, pit privies and experimental systems all disposal methods described in Department Circular DEQ-4.~~

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: The term "commercial unit" is defined in new ARM 17.36.912(5). The term is used in the definitions of individual, shared, and multiple-user wastewater systems. The proposed definition of "commercial unit" is the same as the definition in these rules and DEQ-4, 2013 edition. The definition is necessary to clarify how shared and multiple-user systems are defined.

The proposed amendments delete the definition of "dwelling." The term

"dwelling" is currently used only in the definition of "wastewater" to refer to wastewater discharged from a dwelling. The proposed amendments would modify the definition of "wastewater" to delete the reference to discharge from a dwelling. Consequently, the definition of "dwelling" is no longer necessary.

The proposed amendments to the definition of "floodplain" in ARM 17.36.912(10) eliminate the exception for areas that receive less than one foot of water per occurrence that are considered "zone b" areas by the Federal Emergency Management Agency (FEMA). The defined term "floodplain" is used in rules that restrict the construction of drainfields in and near floodplains. The exception for FEMA "zone b" in the current definition could allow construction of drainfields in areas that are inundated by floodwaters less than one foot deep during the 100-year flood. Because any inundation of drainfields by flood waters during a 100-year flood could interfere with proper drainfield operation, it is necessary to eliminate the exception, in the definition of "floodplain," for FEMA "zone b" areas.

The proposed amendments to the definition of "impervious layer" in ARM 17.36.912(14) change, from 120 to 240 minutes per inch, the percolation rate at which material is considered impervious. The amendment conforms this definition to that in DEQ-4, 2013 edition, and is necessary because adequate wastewater treatment can be achieved in soils with slower percolation rates.

The proposed amendments to the definition of "individual wastewater system" in ARM 17.36.912(15) replace the term "commercial structure" with "commercial unit." This is necessary in order to use the term "commercial unit" as defined in these rules and in DEQ-4, 2013 edition. The amendments also delete the limitation to 24 people served, and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system contained in 75-6-102, MCA.

The proposed amendment to the definition of "living unit" in ARM 17.36.912(17) deletes the reference to "family" and replaces it with "residential." This is necessary because not all residential uses involve use by a family. The amendments also identify the basic features of a living unit, which are that it has facilities for sleeping, cooking, and sanitation. The amendments conform this definition to that in the Sanitation in Subdivisions Act rules and DEQ-4 and are necessary to identify which structures constitute living units for the purposes of these rules.

The proposed amendments to the definition of "multiple-user wastewater system" in ARM 17.36.912(18) replace the term "commercial structure" with "commercial unit." This is necessary in order to use the term "commercial unit" as defined in these rules and in DEQ-4, 2013 edition. The proposed amendments provide that multiple-user systems can consist of two or more living units, commercial units, or a combination of residential and commercial units. This is necessary to provide guidance about the meaning of the rules. The amendments also delete the limitation to 24 people served and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system. The amendments also modify the formula for determining when proposed residential water and sewer

systems will be subject to the requirements for public systems. The current rule multiplies the number of proposed living units times the county average of persons per living unit, based on the most recent census data. The amendments standardize the persons per living unit to 2.5. This is necessary to ensure that the requirements for public systems are applied consistently across the state to developments of a certain size.

The proposed amendments delete the definition of "package plants" in ARM 17.36.912(20). The term is used in a list of sewage system components in footnote (2) of the setback table in ARM 17.36.918. Because the proposed amendments delete the term from the footnote to the setback table, this definition is no longer necessary.

The proposed amendment to the definition of "percolation test" in ARM 17.36.912(21) references the procedures for performing percolation tests set out in DEQ-4 Appendix A. This amendment conforms to the definition in DEQ-4 and is necessary to clarify that tests must be done in accordance with Appendix A to meet the requirements of these rules.

The proposed amendments modify the definition of "piped water system" in ARM 17.36.912(22). This is necessary because the term "piped water system" is used only in the definition of "dwelling," which the proposed amendments would replace with the term "living unit." The modification replaces the term with "piped water supply," which is used in ARM 17.36.916(6).

The proposed amendments to the definition of "septic tank" in ARM 17.36.912(29) make minor changes for clarification and are necessary to conform to the definition in DEQ-4, 2013 edition.

The proposed amendments to the definition of "shared wastewater system" in ARM 17.36.912(30) replace the term "commercial structure" with "commercial unit." This is necessary in order to use the term "commercial unit" defined in these rules and in DEQ-4, 2013 edition. The amendments also clarify that shared user systems can consist of two or more living units, commercial units, or a combination of residential and commercial units. This is necessary to provide guidance about the meaning of the rules. The amendments also delete the limitation to 24 people served, and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system. The amendment conforms to the definition of "shared wastewater system" in DEQ-4, 2013 edition. The amendments also delete the reference to the formula for determining when a shared system is subject to the design standards for public systems. The reference is not necessary because shared systems can be public based on the definitions in 75-6-102, MCA, but will not reach the public threshold based on the county average of persons per living unit.

The proposed amendment to the definition of "soil profile" in ARM 17.36.912(33) adds a reference to the soil classification method set out in Appendix B of DEQ-4. The amendment is necessary to provide guidance to permit applicants about where the required procedures can be found.

The proposed amendments to the definition of "wastewater" in ARM 17.36.912(36) delete the reference to wastewater that is discharged from a dwelling, building, or other facility. The amendment is necessary to include systems that do

not discharge from a building, such as waste segregation systems and incinerator toilets. The proposed amendments also conform this definition to that in DEQ-4, 2013 edition.

The proposed amendments to the definition of "wastewater treatment system" in ARM 17.36.912(37) replace the reference to pit privies and experimental systems with a reference to all disposal methods described in DEQ-4. Pit privies and experimental systems are addressed in DEQ-4, together with a number of other types of systems. The amendment is necessary to provide a more complete reference to the types of wastewater treatment systems.

17.36.918 HORIZONTAL SETBACKS, FLOODPLAINS (1) Minimum horizontal setback distances (in feet) are as follows:

TABLE 1
SETBACK DISTANCES
(in feet)

<u>From</u>	<u>To</u> Sealed components (1) and other components (2)	<u>To</u> Absorption systems (3)
Public or <u>multiple-user drinking water wells/springs</u>	100	100
<u>Individual and shared drinking water supply</u>	<u>50</u>	<u>100</u>
Other wells <u>(4)</u>	50	100
Suction lines	50	100
Cisterns	25	50
Roadcuts, escarpments	10 (4) <u>(5)</u>	25
Slopes > 25% <u>35 percent</u> (5) <u>(6)</u>	10 (4) <u>(5)</u>	25
Property boundaries <u>(7)</u>	10	10
Subsurface drains	10	10
Water lines <u>mains</u> <u>(8)</u>	10	10
Drainfields/sand mounds (3)	10	-
Foundation walls	10	10
Surface water, Springs	50	100
Floodplains	--Sealed components - no setbacks (1) <u>Other components - 100 (2)</u>	100

(1) Sealed components include ~~sewer lines, sewer mains, septic tanks, grease traps, dosing tanks, pumping chambers,~~ holding tanks, and sealed pit privies, and

the components addressed in Department Circular DEQ-4, Chapters 4 and 5. Holding tanks and sealed pit privies must be located at least 40 ~~ten~~ feet outside the floodplain or any openings must be at least two feet above the floodplain elevation.

(2) Other components include ~~intermittent and recirculating sand filters, package plants, and evapotranspiration systems~~ the components addressed in Department Circular DEQ-4, Chapter 7.

(3) Absorption systems include ~~absorption trenches, absorption beds, sand mounds, and other drainfield type systems that are not lined or sealed. This term also includes seepage pits and unsealed pit privies~~ the systems addressed in Department Circular DEQ-4, Chapter 6.

(4) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4. Footnotes (4) and (5) remain the same, but are renumbered (5) and (6).

(7) Easements may be used to satisfy the setback to property boundaries.

(8) Sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(2) The reviewing authority may require greater horizontal separation distances than those specified in Table 1, if it determines that site conditions or water quality ~~nondegradation~~ requirements indicate a need for the greater distance.

(3) through (5) remain the same.

AUTH: 75-5-201, MCA
IMP: 75-5-305, MCA

REASON: Existing footnotes (1), (2), and (3) of Table 1 identify sealed components, "other" components, and absorption systems that are subject to Table 1. The proposed amendments to footnotes (1), (2), and (3) delete the lists of components and systems in the footnotes and replace them with a reference to DEQ-4, Chapters 4, 5, 6, and 7. The components and systems currently listed in the footnotes are addressed in DEQ-4, but DEQ-4 includes other components and systems as well. It is not practical to list all of the components and systems in the footnote. To provide a more complete identification of components and systems that are subject to Table 1, it is necessary to identify them by reference.

The proposed amendments clarify that the setback row referring to "Public or multiple-user wells/springs" applies to "drinking water" supplies. This is necessary to clarify that the referenced setbacks apply only to water wells proposed to be used for a human drinking water supply.

Proposed new footnote (4) clarifies that the setbacks for other wells do not apply to monitoring wells. Compared with wells for irrigation or stockwater, monitoring wells do not present a significant risk of surfacing sewage, and in some cases monitoring wells must be installed close to a sewage source to determine potential impacts to water quality.

A new setback row is proposed for "Individual and shared water supply wells." Because new footnote (4) designates "other wells" as non-drinking water wells, the new row is necessary to provide a setback for individual and shared drinking water wells.

The proposed amendments to the setbacks for roadcuts, escarpments, and slopes renumber the existing footnotes from (4) to (5). The amendments increase, from 25 percent to 35 percent, the slope to which the slope setback applies. This is necessary to be consistent with the proposed amendments to ARM 17.36.322, which allow, through a Department of Environmental Quality waiver, pressure-dosed sewage treatment systems on slopes between 25 percent and 35 percent. The amendments also renumber, from (5) to (6), the existing footnote that states that the slope setback applies down-gradient of the sealed component, other component, or drainfield/soil absorption system.

The proposed amendments add a new footnote (7) to the ten-foot setback for property boundaries, to clarify that easements may be obtained to satisfy the setback. The purpose of the setback is to allow owners adequate access to their facilities for purposes of repairs and maintenance. In some cases the ten-foot buffer from the property boundary may be unavailable. In those cases, an easement from the adjoining landowner will provide adequate assurance that access is available.

The proposed amendments modify the current ten-foot setback for "water lines" so that it would apply only to "water mains." Ten feet of horizontal separation is not needed between sewage system components and water service lines. This amendment will also provide consistency with a comparable setback in the Sanitation in Subdivisions Act rules and the Uniform Plumbing Code.

The proposed amendments add a new footnote (8) to the setback, for water mains, that requires an 18-inch vertical separation between water and sewer mains. The 18-inch vertical separation requirement is currently found in DEQ-1 and the requirement is included in footnote (8) to ensure that permit applicants are aware of it.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (3)(n)(ii) remain the same.

(4) A person may not commence or continue the construction, alteration, extension, or operation of a public water supply system or public sewage system until the applicant has submitted a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and has received written approval. Three sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or public sewage system consistent with the approved design report, plans, and specifications. Failure to construct or operate the system according to the approved plans and specifications or the department's conditions of approval is an alteration for purposes of this rule. Design reports, plans, and specifications must meet the following criteria:

(a) through (c) remain the same.

(d) the board adopts and incorporates by reference ARM 17.36.320 through 17.36.325 and ~~17.36.327~~. The design report, plans, and specifications for public subsurface sewage treatment systems must be prepared in accordance with ARM 17.36.320 through 17.36.325 and ~~17.36.327~~, and in accordance with the format and criteria set forth in Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems;" For public subsurface sewage treatment systems

with a design flow greater than or equal to 2500 gallons per day, the design report, plans, and specifications must be prepared by a professional engineer.

(e) through (20) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: ARM 17.38.101 sets out requirements for plans for public water supply and public sewage systems. The rule is promulgated under the board's authority under the public water and sewer (PWS) statutes in Title 75, chapter 6, part 1, MCA. ARM 17.38.101(4)(d) incorporates by reference sewage system rules that are promulgated by the Department of Environmental Quality (department) under the Sanitation in Subdivisions Act, Title 76, chapter 4, MCA. In this joint department/board rule notice, the department is proposing amendments to some of the Sanitation in Subdivisions Act rules incorporated by reference in ARM 17.38.101(4)(d). See department's proposed amendments to ARM 17.36.320 through 17.36.323 and ARM 17.36.325 above. If, after public comment, the department amends those Sanitation in Subdivisions Act rules, the board is proposing to incorporate the department's amendments in ARM 17.38.101. The incorporation of the Sanitation in Subdivisions Act rules within the PWS rules is necessary to maintain consistency between board PWS requirements for subsurface sewage systems and department requirements for subsurface sewage systems in proposed subdivisions.

The board is proposing to amend ARM 17.38.101(4)(d) to delete the incorporation by reference of ARM 17.36.327, which sets out provisions applicable to existing sewage systems in proposed subdivisions. The requirements in ARM 17.36.327 are less stringent than the requirements in the rules pertaining to public sewage systems. Because of the volume of sewage with which to deal, it is not appropriate for ARM 17.36.327 to apply to public sewage systems.

The proposed amendments to ARM 17.38.101(4)(d) also add a requirement that professional engineers design public subsurface sewage treatment systems with design flows greater than, or equal to, 2500 gallons per day. This requirement is currently codified in Sanitation in Subdivisions Act rules at ARM 17.36.320, but the proposed amendments will delete the requirement from ARM 17.36.320 and add it to ARM 17.38.101(4)(d). These amendments are necessary to consolidate, in the PWS rules, the requirements for design of public sewage systems by professional engineers.

17.38.106 FEES (1) remains the same.

(2) Department review will not be initiated until fees calculated under (2)(a) through ~~(e)~~ (f) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full. The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or subparts listed in these ~~citations~~. subsections:

(a) The fee schedule for designs requiring review for compliance with Department Circular DEQ-1 is set forth in Schedule I, as follows:

SCHEDULE I

Policies	
ultra violet disinfection.....	\$ 700
point-of-use/point-of-entry treatment.....	\$ 700
Section 1.0 Engineering Report.....	\$ 280
Section 3.1 Surface water	
quality and quantity	\$ 700
structures	\$ 700
Section 3.2 Ground water	\$ 840
Section 4.1 Microscreening.....	\$ 280
Section 4.4 <u>2</u> Clarification	
standard clarification	\$ 700
solid contact units.....	\$ 1,400
Section 4.2 <u>3</u> Filtration	
rapid rate.....	\$ 1,750
pressure filtration.....	\$ 1,400
diatomaceous earth.....	\$ 1,400
slow sand	\$ 1,400
direct filtration.....	\$ 1,400
biologically active filtration.....	\$ 1,400
membrane filtration	\$ 1,400
micro and ultra filtration.....	\$ 1,400
bag and cartridge filtration.....	\$ 420
Section 4.3 <u>4</u> Disinfection	\$ 700
Section 4.4 <u>5</u> Softening.....	\$ 700
Section 4.6 Ion Exchange	\$ 700
Section 4.5 <u>7</u> Aeration	
natural draft.....	\$ 280
forced draft.....	\$ 280
spray/pressure	\$ 280
packed tower.....	\$ 700
Section 4.6 <u>8</u> Iron and manganese	\$ 700
Section 4.7 <u>9</u> Fluoridation	\$ 700
Section 4.8 <u>10</u> Stabilization.....	\$ 420
Section 4.9 <u>11</u> Taste and odor control.....	\$ 560
Section 4.10 Microscreening.....	\$ 280
Section 4.11 Ion exchange	\$ 700
Section 4.12 Adsorptive media	\$ 700
Chapter 5 Chemical application	\$ 980
Chapter 6 Pumping facilities	\$ 980
Section 7.1 Plant storage.....	\$ 980
Section 7.2 Hydropneumatic tanks	\$ 420
Section 7.3 Distribution storage.....	\$ 980
Section 7.4 Cisterns.....	\$ 420
Chapter 8 Distribution system	
per lot fee	\$ 70
non-standard specifications	\$ 420

transmission distribution (per lineal foot).....	\$ 0.25
rural distribution system (per lineal foot)	\$ 0.03
sliplining existing mains (per lineal foot).....	\$ 0.15
Chapter 9 Waste disposal.....	\$ 700
Appendix A	
new systems	\$ 280
modifications	\$ 140

(b) through (c) and Schedule III remain the same.

(d) The fee schedule for designs requiring review for compliance with Department Circular DEQ-4 is set forth in Schedule IV, as follows:

SCHEDULE IV

Chapter 4 Pressure Dosing.....	\$ 280
Chapter 7 5 Septic Tanks	\$ 280
Chapters 8, 10, 11, 12, 13 <u>6</u> Soil Absorption Trenches <u>Systems</u>	\$ 280
Chapter 9 Dosing System.....	\$ 280
Chapter 14 Elevated Sand Mounds	\$ 280
Chapter 6 , Subchapter 6.8 <u>ETA and ET Systems</u>	\$ 700
Chapters 15, 16, 17 , Subchapters <u>7.1, 7.2, and 7.3</u> Filters.....	\$ 280
Chapters 17, 18 <u>ETA and ET Systems</u>	\$ 700
Chapter 20 <u>7</u> , Subchapter <u>7.4</u> Aerobic Treatment	\$ 700
Chapter 24 <u>7</u> , Subchapter <u>7.5</u> Chemical Nutrient-Reduction Systems ..	\$ 700
Chapter 7 , Subchapter <u>7.6</u> Alternate Advanced Treatment Systems.....	\$ 700
Chapter 24, 25, 26, 27 <u>8</u> Holding Tanks, Pit Privy, Seepage Pits, <u>Waste Segregation, Experimental Systems</u>	\$ 280
Appendix D	\$ 280
Non-degradation Review	\$ 420

(e) ~~The fee schedule for the review of plans and specifications not covered by a specific department design standard, but within one of the following categories, The fee schedule for designs requiring review for compliance with Department Circular DEQ-10 is set forth in Schedule V as follows:~~

SCHEDULE V

Spring box and collection lateral.....	\$ 350
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(f) The fee schedule for designs requiring review for compliance with Department Circular DEQ-16 is set forth in Schedule VI, as follows:

SCHEDULE VI

<u>Cisterns.....</u>	<u>\$ 420</u>
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(3) through (7) remain the same.

AUTH: 75-6-108, MCA

IMP: 75-6-108, MCA

REASON: The proposed amendment to ARM 17.38.106(2) clarifies rule language. The proposed amendment is necessary to use correct language in the rule description. The proposed amendment is house-keeping in nature and has no direct effect on the regulation.

The proposed amendments to ARM 17.38.106(2)(a) modify the review fee categories under that schedule. The proposed amendments are necessary to correspond to the proposed 2014 edition of Department Circular DEQ-1 (DEQ-1). The proposed amendments do not modify any review fee. They merely correct the line item titles to reflect the new chapter numbering and naming. The cumulative amount for impacted persons is zero because there is no proposed increase, decrease, or new amount. No persons are affected fiscally by this rule amendment because the fees remain the same for every type of application.

The proposed amendments to ARM 17.38.106(2)(d) modify the review fee categories under that table. The proposed amendments are necessary to correspond to the 2013 edition of Department Circular DEQ-4 (DEQ-4). The Schedule IV table was not updated when DEQ-4 was updated in 2013; therefore, fee item headings described in the Schedule IV table are no longer accurate. The proposed amendments do not increase any fee. They correct the line item titles to reflect the new chapter numbering and naming. The cumulative amount for impacted persons is zero because there is no proposed increase, decrease, or new amount. No persons are affected fiscally by this rule amendment because the fees remain the same for every type of application.

The proposed amendment to ARM 17.38.106(2)(e) would modify the review fee language for Schedule V. The proposed amendment is necessary to incorporate new Department Circular DEQ-10 (DEQ-10) into the line item description. The review fee is not changed. Prior to adoption of DEQ-10, the department charged a review fee for review of plans and specifications not covered by a specific design standard, which covered spring boxes and collection laterals, of \$350. The review fee for spring boxes and collection laterals under new DEQ-10 will remain at \$350.

The proposed addition of ARM 17.38.106(2)(f) would create a new review fee Schedule VI. The proposed amendment is necessary to incorporate new Department Circular DEQ-16 (DEQ-16) into the fee schedule. The review fee is not changed. Prior to adoption of DEQ-16, the department charged a review fee of \$420 for the review of cistern plans and specifications under Department Circular DEQ-1. The review fee for cisterns under new DEQ-10 will remain at \$420.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., May 22, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board and department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the board or department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the board and department have determined that the amendment of the above-referenced rules will significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: /s/ Robin Shropshire
ROBIN SHROPSHIRE
Chairman

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Tracy Stone-Manning
TRACY STONE-MANNING, Director

Certified to the Secretary of State, April 14, 2014.